

REFERENCE TITLE: **taxpayer information ruling**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2692

Introduced by
Representatives Yarbrough, Crandall, Murphy, Nichols

AN ACT

AMENDING SECTIONS 42-2052 AND 42-2101, ARIZONA REVISED STATUTES; RELATING TO PRIVATE TAXPAYER RULINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 42-2052, Arizona Revised Statutes, is amended to
3 read:

4 42-2052. Erroneous advice or misleading statements by the
5 department: abatement of penalties and interest:
6 definition

7 A. Notwithstanding sections 42-1123 and 42-1125, no interest or
8 penalty may be assessed on an amount assessed as a deficiency if either:

9 1. The deficiency assessed is directly attributable to erroneous
10 written advice furnished to the taxpayer by an employee of the department
11 acting in an official capacity in response to a specific request from the
12 taxpayer and not from the taxpayer's failure to provide adequate or accurate
13 information.

14 2. All of the following are true:

15 (a) A tax return form or tax ruling prepared by the department
16 contains a statement that, if followed by a taxpayer, would cause the
17 taxpayer to misapply this title or title 43.

18 (b) The taxpayer reasonably relies on the statement.

19 (c) The taxpayer's underpayment directly results from this reliance.

20 B. Each employee of the department, at the time any oral advice is
21 given to any person, shall inform the person that the department is not bound
22 by such oral advice.

23 C. For THE purposes of this section, ~~+~~

24 1. ~~"Tax return form" includes the instructions that the department~~
25 ~~prepares for use with the tax return form whether the form or instructions~~
26 ~~are provided on paper or by electronic means.~~

27 2. "tax ruling" means a statement issued by the director and
28 denominated as a tax ruling or a tax procedure.

29 Sec. 2. Section 42-2101, Arizona Revised Statutes, is amended to read:

30 42-2101. Private taxpayer rulings: request: revocation or
31 modification: taxpayer information ruling:
32 definition

33 A. The department may issue private taxpayer rulings to taxpayers and
34 potential taxpayers on request. Each request shall be in writing and shall:

35 1. State the name, address and, if applicable, taxpayer identifying
36 number of the taxpayer or potential taxpayer who requests the ruling.

37 2. Describe all facts that are relevant to the requested ruling.

38 3. State whether, to the best knowledge of the taxpayer or potential
39 taxpayer, the issue or related issues are being considered by the department
40 in connection with an active audit, protest or appeal that involves the
41 taxpayer or potential taxpayer and whether the same request has been or is
42 being submitted to another taxing authority for a ruling.

43 4. Be signed by the taxpayer or potential taxpayer who makes the
44 request or by an authorized representative of the taxpayer or potential
45 taxpayer.

1 B. A private taxpayer ruling may be revoked or modified by either:
2 1. A change or clarification in the law that was applicable at the
3 time the ruling was issued, including changes or clarifications caused by
4 legislation, adopted administrative rules and court decisions.

5 2. Actual written notice by the department to the last known address
6 of the taxpayer or potential taxpayer of the revocation or modification of
7 the private taxpayer ruling.

8 C. With respect to the taxpayer or prospective taxpayer to whom the
9 private taxpayer ruling was issued, the revocation or modification of a
10 private taxpayer ruling shall not be applied retroactively to tax periods or
11 tax years before the effective date of the revocation or modification and the
12 department shall not assess any penalty or tax attributable to erroneous
13 advice that it furnished to the taxpayer or potential taxpayer in the private
14 taxpayer ruling if:

15 1. The taxpayer reasonably relied on the private taxpayer ruling.

16 2. The penalty or tax did not result either from a failure by the
17 taxpayer to provide adequate or accurate information or from a change in the
18 information.

19 D. A private taxpayer ruling may not be relied upon, cited ~~nor~~ OR
20 introduced into evidence in any proceeding by a taxpayer other than the
21 taxpayer who has received the private taxpayer ruling.

22 E. A taxpayer may apply for an administrative hearing to determine the
23 propriety of a retroactive application of a revoked or modified private
24 taxpayer ruling by filing a written petition with the department pursuant to
25 section 42-1251 within forty-five days after receiving written notice of the
26 department's intent to retroactively apply a revoked or modified private
27 taxpayer ruling.

28 F. A private taxpayer ruling constitutes the department's
29 interpretation of the law or rules only as they apply to the taxpayer making,
30 and the particular facts contained in, the request.

31 G. A private taxpayer ruling may be issued only if no tax has accrued
32 with respect to the transactions, events or facts contained in the request.
33 The department may issue a private taxpayer ruling addressing a taxpayer's
34 ongoing business activities, except that the ruling applies only to
35 transactions that occur or tax liabilities that accrue from and after the
36 date the taxpayer receives the ruling.

37 H. The department shall attempt to issue private taxpayer rulings
38 within forty-five days after receiving the written request and on receiving
39 the facts that are relevant to the ruling. If the ruling is expected to be
40 delayed, the department shall notify the requestor of the delay and the
41 proposed date of issuance.

42 I. Within thirty days after being issued, the department shall
43 maintain the private taxpayer ruling as a public record and make it available
44 at a reasonable cost for public inspection and copying. The text of private

1 taxpayer rulings is open to public inspection subject to the confidentiality
2 requirements prescribed by article 1 of this chapter.

3 J. A TAXPAYER RULING REQUEST THAT COMPLIES WITH SUBSECTION A,
4 PARAGRAPHS 2, 3 AND 4 OF THIS SECTION SHALL BE CONSIDERED AS A REQUEST FOR A
5 TAXPAYER INFORMATION RULING INSTEAD OF A PRIVATE TAXPAYER RULING.
6 SUBSECTIONS B, D AND F THROUGH H OF THIS SECTION APPLY TO A TAXPAYER
7 INFORMATION RULING. SUBSECTION C OF THIS SECTION APPLIES TO A TAXPAYER
8 INFORMATION RULING IF THE TAXPAYER OR POTENTIAL TAXPAYER CONCLUSIVELY
9 DEMONSTRATES THAT THE TAXPAYER OR POTENTIAL TAXPAYER WAS THE REQUESTOR OF THE
10 TAXPAYER INFORMATION RULING ALTHOUGH THE TAXPAYER OR POTENTIAL TAXPAYER WAS
11 ACTING THROUGH A REPRESENTATIVE.

12 J. ~~I~~ FOR THE PURPOSES OF this section, "private taxpayer ruling"
13 OR "TAXPAYER INFORMATION RULING" means a written determination by the
14 department issued on or after September 21, 1991 that interprets and applies
15 one or more statutes contained in this title or title 43 and any applicable
16 administrative rules that the department has adopted to the specific
17 prospective facts described in the request for a private taxpayer ruling OR
18 TAXPAYER INFORMATION RULING.